REMARKS

The present application has been subjected to a restriction requirement. In particular, the Examiner has divided the claims pending in this application into Groups I-VIII, asserting that the inventions claimed in these groups are distinct.

Applicant's provisionally elect for further prosecution, the claims of Group VII, namely claims 67 and part of claim 69. Applicant's also respectively traverse the restriction requirement and ask for its reconsideration of the restriction for the reasons set forth below.

With this Amendment, claims 59 and 62 have been amended to claim the use of the polypeptide. This should alleviate the Examiner's objections to these claims. Further, with regard to claims 58 and 64-66, Applicant's respectfully submits that the claims refer to both the nucleotide sequences and to the corresponding amino acid sequences of SEQ ID NO 1 and SEQ ID NO 3. Given the above, Applicant's believe that the objections are overcome and addition of the claims to the selected group for prosecution is respectfully requested.

Applicant's hereby submit that the claims of Groups VII-VIII should be examined concurrently because the field of search for the groups of claims should be substantially the same. The avowed purpose of the Patent and Trademark Office in requiring an election, is the avoidance of a burdensome examination, i.e., to avoid multiple searches, etc. However, MPEP §803 provides that if the search and examination of the entire application can be made without serious burden, the Examiner is encouraged to examine it on the merits even if it is to include claims to two different or independent inventions.

It is respectively submitted that the concurrent examination of the claims of Group VII and Group VIII will not place an undue burden on the Examiner. The Office Action asserts that the subject matter of the Group VII claims relates to a vaccine comprising a polypeptide with the amino acid sequence of SEQ ID NO 2 and a method of use of the same, classified in Class 424, Subclass 234.1. The Office Action further asserts that the Group VIII claims are drawn to a vaccine comprising a polypeptide with the amino acid sequence of SEQ ID NO 4 and a method of using the same, classified in Class 424, Subclass 249.1. Applicant's respectfully point out that the claims of Group

VII and Group VIII are all drawn to a vaccine comprising a polypeptide with a particular amino acid sequence. The search required for the claims of Group VII and Group VIII should be identical.

It is apparent that the subject matter of groups VII and VIII overlap. If the Group VII claims are examined first, it is not understood how the Examiner could limit his search to Class 424, Subclass 234.1. Certainly, in determining whether the subject matter of the Group VII claims are patentable a search of Class 424, Subclass 249.1 is required for showings of *Neisseria*.

Conversely, if the Group VIII claims were examined first, it is not understood how the Examiner could limit his search to Class 424, Subclass 249.1. The Group VIII claims also call for a vaccine comprising a polypeptide. Certainly, the Examiner will have to search Class 424, Subclass 234.1 for possible showings of a bacterium or component thereof.

Further, the Examiner states that the technical features of Groups VII and VIII are vaccines comprising SEQ ID NO: 2 and SEQ ID NO: 4, respectfully and a method of using the same. It appears, given the above, that the Examiner is stating that the only difference between Groups VII and VIII is the reference to a different sequences. According to MPEP § 803.04 and § 1850, where there is no independent and distinct invention, up to 10 sequences will be examined in one application (The Commissioner has decided *sua sponte* to partially waive 37 CFR 1.475 and 1.499...to permit applicants to claim up to ten (10) nucleotide sequences that do not have the same or corresponding special technical feature without the payment of an additional fee, MPEP § 1850). It is respectfully submitted that Groups VII and VIII do not cover independent and distinct inventions and as stated the only difference is the featured sequence. Therefore, the two groups should be examined together in the present application.

Moreover, the Applicant's respectfully request that the claims from Groups V and VI also be examined in the present application as well as the objected to claims, specifically, claims 58, 59,61, 62, and 64-66. These claims are all directed to either a nucleotide sequence or to the use of the claimed sequences for a medicament (or more specifically, a vaccine) for neisserial disease. Specifically, claims 65-66 and 70-71 claim nucleotide sequences and claims 58-59, 61-62, and 64 claim the use of the sequences as a

medicament or vaccine for neisserial disease. Therefore, there is no distinct and independent invention beyond that of the four separate sequences. As shown above, MPEP §§ 803.04 and 1850 specifically allow up to ten (10) sequences to be prosecuted in one application. The present application contains only four (4) sequences. As such, it is respectfully submitted that claims 58-59, 61-62, 64-66 and 70-71 be examined in the present application.

In summary, Applicant's believe that the objected to claims 58-59, 61-62, and 64-66 as well as the claims from Groups V, VI and VII be examined along with the claims of the elected Group VII for the above stated reasons. Specifically, four sequence structures are claimed as well as their use as a medicament or vaccine for neisserial disease. Therefore, there is only one invention, the claimed sequences and their use as a medicament or vaccine for neisserial disease. Given that the MPEP allows up to ten sequences to be prosecuted in one application, it is respectfully requested that the objected to claims, as well as the claims of Groups V-VIII be examined together (collectively, claims 58-71).

Respectfully submitted,

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Michael A. Miller
Reg. No.: 50,732
Phone: 216-241-6700
Fax: 216-241-8151

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